

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHRISTIAN BRACAMONTES,

Plaintiff,

vs.

MOYA, Correctional Sergeant;
LOPEZ, Correctional Officer, ISU;
LIZARRAGA, Correctional Officer;
JOHN DOE, Associate Warden;
JOHN and JANE DOES 1-10,

Defendants.

CASE NO. 10cv2512-H (NLS)

ORDER:

**(1) DENYING MOTION FOR
DISCOVERY WITHOUT PREJUDICE**

**(2) DIRECTING SERVICE ON
DEFENDANT MOYA**

INTRODUCTION

Plaintiff, an inmate currently incarcerated at California State Prison-Los Angeles (CSP-LAC), proceeding *pro se* and *in forma pauperis*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 on December 3, 2010. Plaintiff claims prison officials at Centinela State Prison violated his Eighth and Fourteenth Amendment rights by using excessive force against him, among other things. *See* Compl. at 7-15, ¶¶ 11-34.

On January 14, 2011, the District Court issued an Order directing the United States Marshal to effect service on Defendants. [Doc. No. 7.] All named Defendants, except for Moya, have been served.

1 On March 25, 2011, Plaintiff filed a Motion for Discovery pursuant to Federal Rules of Civil
2 Procedure 26(a) and 34(a). However, because an Answer to Plaintiff's Complaint was not due until
3 April 18, 2011, and counsel for Defendants had not yet made an appearance in the case, Plaintiff's
4 motion was premature and the Court denied Plaintiff's motion without prejudice. [Doc. No. 13.]
5 Plaintiff has now filed another motion for discovery. Counsel for Defendants Lopez and Lizarraga
6 has made an appearance and filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure
7 12(b)(6). [Doc. No. 14.] Defendant Moya remains unserved.

DISCUSSION

9 Plaintiff appears to be requesting that the Court issue an order requiring Defendants to
10 produce certain information, documents, and records. However, Plaintiff must first request discovery
11 from Defendants and if Defendants fail to make a disclosure required by Rule 26(a)¹ then Plaintiff may
12 seek a motion to compel. *See Fed.R.Civ.P. 37(a)(1) and (a)(3)(A).* From the proof of service attached
13 to Plaintiff's motion it does appear Defendants were served with a copy of this motion but it is not
14 clear whether they have had the time to respond or whether they have refused to respond.

15 In addition, Plaintiff may request issuance of subpoenas from the Clerk of Court pursuant to
16 Rule 45(a)(3). Plaintiff's *in forma pauperis* status will not relieve him from the payment of fees or
17 expenses associated with the subpoenas. *See Tedder v. Odel*, 890 F.2d 210, 211-212 (9th Cir. 1989).
18 Plaintiff must first serve the subpoenas, and if the subpoenaed parties do not comply, then Plaintiff
19 may file a motion to compel those parties to comply with the subpoenas.

Defendants have filed a Motion to Dismiss under Rule 12(b)(6), and may be awaiting the ruling on that motion prior to engaging in discovery. A Rule 12(b)(6) dismissal may be based on either a “lack of a cognizable legal theory” or ‘the absence of sufficient facts alleged under a cognizable legal theory.’” *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008) (quoting *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990)). However, a plaintiff’s complaint must provide no more than a “short and plain statement of the claim showing that [he] is entitled to relief.” (*Id.*) (citing FED.R.CIV.P. 8(a)(2)). See *Erickson v. Pardus*, 551 U.S. 89, 127 S. Ct. 2197, 2200 (2007) (internal quotation marks omitted)) (“Specific

¹ Rule references are to the Federal Rules of Civil Procedure.

1 facts are not necessary; the statement need only give the defendant[s] fair notice of what ... the
 2 claim is and the grounds upon which it rests.”). Therefore, there would be no benefit to either side
 3 in pursuing detailed fact discovery prior to a ruling on this motion.

4 Plaintiff also states that he has been informed Defendant Moya no longer works at
 5 Centinela and requests Moya’s current mailing address for purposes of service of the Complaint.
 6 In this matter, the Court will direct the United States Marshal to effect service on defendant Moya
 7 in the manner described below.

8 **CONCLUSION**

9 1. Plaintiff’s motion for discovery of prison records and other information is
 10 premature. Thus, the Court **DENIES WITHOUT PREJUDICE** Plaintiff’s motion.

11 2. As to Defendant Moya, the Court **ORDERS** the Attorney General’s office to
 12 obtain Moya’s last known contact information from the CDCR, and provide this information to the
 13 U.S. Marshal in a *confidential memorandum* indicating that the summons and Complaint are to be
 14 delivered to the specified address. The Deputy Attorney General assigned to this case shall
 15 provide the U.S. Marshal with any such information on or before May 12, 2011. Within forty-five
 16 (45) days of receipt of any available addresses from the Deputy Attorney General, the Court
 17 **ORDERS** the U.S. Marshal to serve a copy of Plaintiff’s Complaint and summons upon Moya.
 18 All costs of service shall be advanced by the United States pursuant to the Court’s January 14,
 19 2011 Order directing service pursuant to 28 U.S.C. § 1915(d) and Fed. R. Civ. P. 4(c)(3). [Doc.
 20 No. 7.]

21 **IT IS FURTHER ORDERED** that the Clerk of the Court provide a copy of: (1) the
 22 Court’s January 14, 2011 Service Order [doc. no. 7]; (2) this Order; and (3) the Complaint,
 23 summons and a blank U.S. Marshal Form 285 to the Deputy Attorney General for purposes of re-
 24 attempting service as to Defendant Moya. Both the Deputy Attorney General and the Office of the
 25 U.S. Marshal are **ORDERED** to keep any address provided for Moya strictly confidential. Thus,
 26 any such address **shall not** appear on any U.S. Marshal Form 285, **shall not** be provided to
 27 Plaintiff, and **shall not** be made part of the Court’s record.

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1 In the event that the CDCR does not have an updated address for Moya, the Deputy
2 Attorney General shall file a Declaration with the Court to that effect by no later than **May 12,**
3 **2011.**

4 IT IS SO ORDERED.

5 DATED: April 29, 2011

6 
7 Hon. Nita L. Stormes
8 U.S. Magistrate Judge
United States District Court

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